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HUMAN RIGHTS COMMITTEE
Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

MAURITIUS

1. The Committee considered the third periodic report of Mauritius (CCPR/C/64/Add.12 and HRI/CORE/1/Add.60) at its 1476th to 1478th meetings, on 19 and 20 March 1996 (see CCPR/C/SR.1476, 1477 and 1478). At its 1497th meeting, on 2 April 1996, the Human Rights Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the third periodic report presented by Mauritius and expresses its appreciation to the State party for the additional information submitted orally and in writing during the consideration of the report by a high-level delegation. The Committee regrets, however, that the report was long overdue. The valuable supplementary information provided by the delegation, both oral and written, provided a sound basis for a frank and fruitful dialogue between the Committee and the State party.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee finds no significant factors or difficulties which would prevent the effective implementation of the Covenant in Mauritius.

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C. Positive aspects

4. The Committee notes that the harmonious coexistence of the multi-ethnic population of Mauritius and its atmosphere of tolerance strengthen the ability of Mauritius to live up to its obligations under the Covenant.

5. The Committee expresses its appreciation for the adoption of the Abolition of Death Penalty Act 1995 which came into force in December 1995 and provides for the imposition of a sentence of imprisonment for life in place of the death penalty.

6. The Committee welcomes the amendment to section 16 of the Constitution by the enactment of the Constitution of Mauritius (Amendment) Act 1995 which adds sex to the grounds on which discrimination by laws or by public authorities is prohibited. The amendment to the Mauritius Citizenship Act 1968, removing discrimination on grounds of sex, the proposed Bill on Domestic Violence and the full recognition of the equal rights of children born in and out of wedlock are also welcome.

7. The Committee welcomes that the large-scale legislative reform which is being contemplated with a view, inter alia, to shortening the length of court proceedings and to reconsidering the system of legal aid.

8. The Committee notes with appreciation the promulgation of the Child Protection Act in 1994.

9. The Committee welcomes the establishment of a Human Rights Unit by the Attorney-General with a view, inter alia, to undertaking the preparation of the reports of Mauritius to the various United Nations human rights treaty bodies.

10. The Committee welcomes the initiatives of Mauritius to establish an Indian Ocean Human Rights Institute.

11. The announcement concerning the proposed establishment of an Independent Police Complaints Board is welcomed.

12. The Committee also welcomes the intention of the Government to set up an Independent Broadcasting Authority.

D. Principal subjects of concern

13. The Committee is concerned that the non-incorporation of all the rights guaranteed in the Covenant into domestic law and the existence of non-permissible limitations affect the full implementation of the Covenant in Mauritius and that, accordingly, the legal system of Mauritius does not ensure effective remedies in all cases of violations of rights guaranteed in the Covenant.

14. The Committee is concerned that excepting personal laws and foreigners from the prohibition of discrimination - as set forth in section 16 of the Constitution - results in a violation of article 26 of the Covenant.

15. The Committee notes with concern that the problem of domestic violence has not yet been the object of appropriate measures.

16. The Committee expresses its concern over the provisions in the thus far non-implemented Dangerous Drugs Act 1995 under which an arrested person may be held incommunicado at the discretion of a police officer.

17. The Committee notes with concern that the powers of detention provided for in sections 5 (1) (k) and 5 (4) of the Constitution are incompatible with article 9 (3) and (4) of the Covenant.

18. The Committee is concerned that the legislation of Mauritius has not yet been brought into line with article 11 of the Covenant.

19. The Committee is concerned at the extent of de facto limitation on the freedom of expression, as exemplified by the banning of two recent literary works without legal measures having been taken to that effect, and at penal offences relating to libel and the dissemination of false news. Extra-legal restrictions on freedom of expression are not compatible with the Covenant.

20. The Committee takes note with concern of the requirement that prior notification be made seven days before any public meeting is held in order to obtain permission from the Commissioner of Police.

21. The Committee is concerned by difficulties faced by those working in the Export Processing Zone in the enjoyment of their rights under article 22 of the Covenant.

E. Suggestions and recommendations

22. The Committee emphasizes the need for a legal machinery enabling individuals to enforce all the rights enshrined in the Covenant before domestic courts.

23. The Committee recommends that all grounds on which discrimination is prohibited, as identified in articles 2 and 26 of the Covenant, be incorporated in the relevant non-discrimination provisions of the Constitution and that the provisions be extended to cover aliens. It further recommends that section 16 (2) and 16 (4) (c) of the Constitution be amended to render them compatible with articles 2 (1), 3 and 26 of the Covenant and that steps be taken to introduce comprehensive anti-discrimination laws to cover all spheres, public or private, protected by the Covenant. It is also recommended that the proposed Equal Opportunity Commission consider whether affirmative action measures, including educational measures, are necessary to overcome remaining obstacles to equality, such as outdated attitudes concerning the role and status of women.

24. Following the abolition of the death penalty, it is recommended that Mauritius consider ratification of the Second Optional Protocol to the Covenant.

25. The Committee expresses the hope that the envisaged Independent Police Complaint Board is established as soon as possible, and that provisions are included in the law to ensure that the Board will enjoy the powers and receive the resources to enable it to investigate allegations of abuse by members of the police.

26. The Committee stresses the need to establish a mechanism to provide legal aid for appeals to the Privy Council.

27. The Committee recommends the reconsideration of the legislation on the publication of false news. If the State party considers it necessary to allow for some restrictions on publications and showing of films, legislation should be introduced establishing criteria consistent with article 19 (3) of the Covenant and providing for judicial review of all decisions to restrict the exercise of freedom of expression. The Committee expresses the hope that the envisaged Independent Broadcasting Authority is established as soon as possible. It suggests the establishment of a mechanism that would allow for a Press Code of Ethics.

28. The Committee suggests that consideration be given to ensuring that restrictions do not exceed what is necessary in a democratic society, in conformity with article 21 of the Covenant.

29. The Committee expresses the hope that, as part of the planned review of industrial legislation, the Government will consider whether workers in export processing zones (who include a majority of women) need additional legal protection to ensure their full enjoyment of the rights guaranteed by article 22 of the Covenant.

30. The Committee recommends that appropriate steps be taken to ensure that the inhabitants of the islands of Agalega and St. Brandon are able to exercise their right to vote as required by article 25 of the Covenant.

31. Lastly, the Committee suggests that steps be taken to disseminate in all languages spoken in Mauritius information about the Covenant and about the report and the proceedings before the Committee. It also suggests that steps be taken to publish educational material, particularly for children, in the most used vernacular languages.

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HUMAN RIGHTS COMMITTEE
Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SPAIN

1. The Committee considered the fourth periodic report of Spain (CCPR/C/95/Add.1 and HRI/CORE/1/Add.2/Rev.2) at its 1479th, 1480th and 1481st meetings, on 20 and 21 March 1996 (see CCPR/C/SR.1479, 1480 and 1481). At its 1498th meeting, on 3 April 1996, the Committee adopted the following comments:

A. Introduction

2. The Committee thanks the State party for submitting, within the allotted time, a report which is in conformity with the Committee's guidelines and for engaging, through its highly qualified delegation, in a constructive dialogue. It notes with satisfaction that the information provided in the report and submitted orally by the delegation has given the Committee an appreciation of the manner in which Spain is acquitting itself of its obligation under the Covenant.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes with concern that terrorist groups continue to perpetrate bloody attacks which result in loss of human life and affect the application of the Covenant in Spain. It also notes the re-emergence of racist and xenophobic theories and behaviour.

C. Positive aspects

4. The Committee notes with satisfaction that Spain has come a long way in the promotion of and respect for human rights. In this connection it welcomes the accession of Spain, on 22 March 1991, to the Second Optional Protocol aiming at the abolition of the death penalty.

5. The Committee welcomes the fact that efforts have been made to disseminate human rights in schools as well as information on the report to the general public.

6. The Committee notes that the new law of 15 January 1996 concerning the status of minors should contribute to the application in Spain of the Convention on the Rights of the Child and the relevant provisions of the Covenant, particularly article 23.

7. The Committee welcomes the progress made by the State party in promoting equal opportunity for women in all sectors of public and professional life.

8. The Committee notes with satisfaction that the Penal Code drawn up in 1995 includes provisions establishing penalties for acts of racial discrimination and xenophobia.

9. Finally, the Committee notes that many decisions in the national courts refer to the Covenant as the legal basis, in conformity with articles 10 and 96 of the Constitution.

D. Principal subjects of concern

10. The Committee is concerned at the numerous reports it has received of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces. It notes with concern, in that regard, that investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence. Moreover, those who perpetrate such deeds are seldom suspended from their functions for any length of time.

11. The Committee is concerned that proofs obtained under duress are not systematically rejected by courts.

12. The Committee expresses concern at the maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the Audiencia Nacional without possibility of appeal. The Committee emphasizes that these provisions are not in conformity with articles 9 and 14 of the Covenant. Again in regard to those two articles of the Covenant, the Committee notes with concern that the duration of pre-trial detention can continue for several years

and that the maximum duration of such detention is determined according to the applicable penalty.

13. With regard to the increase in the number of asylum-seekers, the Committee notes that anyone whose application for asylum or for refugee status is denied can be held for seven days prior to being expelled.

14. The Committee deplores the poor prison conditions that exist in most prisons, generally resulting from overcrowding, which deprives those detained of the rights guaranteed in article 10 of the Covenant.

15. Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22 (48).

E. Suggestions and recommendations

16. The Committee invites the State party to take the necessary steps, including educational measures and information campaigns, to avert racist and xenophobic tendencies.

17. The Committee recommends that the State party establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces, and urges it to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately. The Committee suggests that comprehensive human rights training should be provided to law-enforcement officials and prison personnel.

18. The Committee recommends that the legislative provisions, which state that persons accused of acts of terrorism or suspected of collaborating with such persons may not choose their lawyer, should be rescinded. It urges the State party to abandon the use of incommunicado detention and invites it to reduce the duration of pre-trial detention and to stop using duration of the applicable penalty as a criterion for determining the maximum duration of pre-trial detention.

19. The State party is strongly urged to institute a right of appeal against decisions of the Audiencia Nacional in order to meet the requirements of article 14, paragraph 5, of the Covenant.

20. The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.